

Commercial Motor Vehicle Enforcement Quarterly



April 2010

Captain's Corner

Captain Robert R. Powers, Jr.

This will be my last article in the Commercial Motor Vehicle Enforcement Quarterly. After a nearly 38 year career with the Michigan State Police, of which I have had the honor to serve in my current position for the past 14 years, I will be retiring effective May 31, 2010.

Since the very first Commercial Motor Vehicle Enforcement Quarterly was published in January 2000, I have enjoyed contributing to this newsletter with the Captain's Corner Article. The past ten years have brought tremendous change to commercial vehicle safety and security. 2010 promises to be another year of significant change as the Federal Motor Carrier Safety Administration (FMCSA) will be publishing several new and far reaching rules.

FMCSA has just promulgated a new rule that beginning June 1, 2010 will require carriers operating CMVs designed to transport 9 - 15 passengers, including the driver to comply with the Federal Motor Carrier Safety Regulations. This new rule applies to both intrastate and interstate motor carriers of passengers.

FMCSA has also released a new rule regarding electronic on-board recorders (EOBR's). FMCSA is currently working on a re-write of the hours of service regulations with a target of publishing an interim final rule by July 2010.

Distracted driving, especially involving texting continues to receive much attention. FMCSA has a rule making to prohibit texting while operating any type of vehicle a primary offense. This bill is now under consideration in the State House of Representatives. The reason that texting while driving is of such a concern is that a driver texting is 20 times more likely to be involved in a crash. On average, a driver texting takes his/her eyes off the road for 4.6 seconds of every 6 seconds spent texting, during this time, a CMV traveling at 55 mph will travel 300 feet, the length of a football field. Is this ridiculously dangerous or what?

FMCSA will also be deploying CSA2010 nationwide this summer. For more information about CSA2010 and all of the new rules and current rule makings, visit www.fmcsa.dot.gov.

Michigan continues to make great strides in reducing the number of crashes, injuries, and fatalities involving commercial motor vehicles. During the past four years alone, crashes involving CMVs have dropped by 20 percent. This truly great

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success is directly attributable to the collaborative efforts of law enforcement, engineering, education and the trucking industry. I am proud to have been a part of this effort.

In closing I want to thank everyone involved in commercial vehicle safety and enforcement for truly making a difference. I will certainly miss being involved myself and writing these articles, however I do look forward to my future endeavors. I wish you all continued safety and success.

GENERAL INFORMATION

FMCSA pushes back CSA 2010 start date

The Federal Motor Carrier Safety Administration (FMCSA) is pushing back the start date for its new Comprehensive Safety Analysis 2010 (CSA 2010) program to November this year - a full five months past its original June kick off date to give itself and the trucking industry more preparation time.

CSA 2010 is designed to make it easier for FMCSA to identify the riskiest motor carriers through the use of more "real-time" safety data. Roadside inspection reports, violations, accident records and other safety-related information that is currently stored in a variety of different individual systems will be collected into two distinct databases— one for carriers and one for drivers.

The data will then be divided into seven specific categories - dubbed "Behavioral Analysis and Safety Improvement Categories" or BASICs - allowing FMCSA to quickly pinpoint developing safety risks, with the resulting safety ratings based on the individual categories rather than overall performance. Failing just one of two specific categories - the ones largely based on traffic and hours-of-service violations - will lead to an unsatisfactory rating even if everything is fine in the other six.

Unlike the current SafetyStat rating system that can be based on very old historical information, the CSA fleet and driver data will be updated monthly. That means one bad month can quickly change a fleet's rating, a rating that is publicly available to shippers and any other interested party. That data will be held in a fleet's record for two years and a driver's record for three. The one exception is accident information, which will be kept on file for both fleets and drivers for five years.

The Unsafe Driving and Fatigued Driving categories are particularly important because a poor rating in either one will result in an overall poor safety rating for the fleet.

USDOT Issues Rule Requiring Electronic On-Board Recorders for Truck and Bus Companies with Serious Hours-of-Service Violations

The U.S. Department of Transportation's Federal Motor Carrier Safety Administration has recently issued a new rule that will require interstate commercial truck and bus companies with serious patterns of hours-of-service (HOS) violations to install electronic on-board recorders (EOBRs) in all their vehicles. Nearly 5,700 interstate carriers will use EOBRs after the final rule's first year of implementation.

Electronic on-board recorders are devices attached to commercial vehicles that automatically record the number of hours drivers spend operating the vehicle. Driving hours are regulated by federal HOS rules, which are designed to prevent commercial vehicle-related crashes and fatalities by prescribing on-duty and rest periods for drivers.

Under the EOBR final rule, carriers found with 10 percent or more HOS violations during a compliance review will be required to install EOBRs in all their vehicles for a minimum of two years. The rule also provides new technical performance standards for EOBRs installed in commercial motor vehicles, including requirements for recording the date, time and location of a driver's duty status.

Additionally, carriers that voluntarily adopt EOBRs will receive relief from some of FMCSA's requirements to retain HOS supporting documents, such as toll receipts used to check the accuracy of driver logbooks.

The rule will go into effect on June 1, 2012 to ensure EOBR manufacturers have sufficient time to meet the rule's performance standards and to manufacture products to meet industry demand.

APPLICABILITY OF THE FMCSA REGULATIONS

Texting Ban and Enforcement on CMV Operators

Enforcement action under the current rules using FMCSRs Section 390.17 Additional equipment and accessories:

Question 1: Do the Federal Motor Carrier Safety Regulations prohibit "texting" while driving a commercial motor vehicle in interstate commerce?

Guidance: Yes. Although the current safety regulations do not include an explicit prohibition against texting while driving by truck and bus drivers, the general restriction against the use of additional equipment and accessories that decrease the safety of operation of commercial motor vehicles applies to the use of electronic devices for texting. Handheld or other wireless electronic devices that are brought into a CMV are considered "additional equipment and accessories" within the context of § 390.17.

"Texting" is the review of, or preparation and transmission of, typed messages through any such device or the engagement in any form of electronic data retrieval or electronic data communication through any such device. Texting on electronic devices while driving decreases the safety of operation of the commercial vehicles on which the devices are used because the activity involves a combination of visual, cognitive and manual distraction from the driving task.

Research has shown that during 6-second intervals immediately preceding safety-critical events (*e.g.*, crashes, near crashes, lane departure), texting drivers took their eyes off the forward roadway an average of 4.6 seconds. Therefore, the use of electronic devices for texting by CMV operators while driving on public roads in interstate commerce decreases safety and is prohibited by 49 CFR 390.17

Compliance with State and Local Laws, Ordinances and Regulations

In addition to announcing regulatory guidance on CMV drivers' use of electronic devices to engage in texting while driving, FMCSA reminds motor carriers and drivers subject to the FMCSRs that the Federal regulations require compliance with the laws, ordinances, and regulations of the jurisdiction in which the CMV is being operated.

Section 392.2, "Applicable operating rules," requires that "every commercial motor vehicle must be operated in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. However, if a regulation of the Federal Motor Carrier Safety Administration imposes a higher standard of care than that law, ordinance or regulation, the Federal Motor Carrier Safety Administration regulation must be complied with."

Thus, in the states and localities having laws, ordinances, and regulations related to "texting" while driving, non-texting cell phone use, or any other similar traffic offenses, a violation of the state or local provision is also a violation of § 392.2 for those CMV drivers to whom it applies.

Summary

Based on the clear consensus that emerged from the Distracted Driving Summit, FMCSA's top priority is to initiate a rulemaking to address the safety risks associated with texting by prohibiting all truck and bus drivers from texting while they are operating on public roads. The regulatory guidance recently issued clarifies the applicability of the agency's current safety regulations and serves as an interim measure to deter texting while driving.

**** "Please contact your local prosecuting attorney before enforcing any of these changes" ****

ACT 300

Effective March 8, 2010

257.618a Vehicle accident; removal from main traveled portion of roadway; conditions; violation as civil infraction.

(1) Unless the operator of a motor vehicle involved in an accident knows or reasonably should know that serious impairment of a bodily function or death has resulted from the accident, the operator or any other occupant of the motor vehicle who possesses a valid driver license shall remove the motor vehicle from the main traveled portion of the roadway into a safe refuge on the shoulder, emergency lane, or median or to a place otherwise removed from the roadway if both of the following apply:

(a) Moving the motor vehicle may be done safely.

(b) The motor vehicle is capable of being normally and safely operated and can be operated under its own power in its customary manner without further damage or hazard to the traffic elements or to the roadway.

(2) The operator or any other person who removes a motor vehicle from the main traveled portion of the roadway as provided in this section before the arrival of a police officer is not prima facie at fault regarding the cause of the traffic accident solely by reason of moving the motor vehicle as provided in this section.

(3) The decision of the operator or any other person to remove or not to remove a motor vehicle from the main traveled portion of the roadway as provided in this section is not admissible in a civil action as evidence that a serious impairment of bodily function has or has not resulted from the accident.

(4) A person who violates this section is responsible for a civil infraction.